IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 690/2007

Judgment delivered on: December 07, 2007

Saraswati Devi & Ors. ..... Appellants.

Through: Ms.Anjana Masih, Advocate.

versus

Ombir Singh & Ors. ..... Respondents

Through: Mr.Pradeep Gaur for respondent no.3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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In the present case the offending vehicle was duly insured with respondent no.3 insurance company, therefore,

there is no need to serve respondents 1 & 2 who are the driver and owner of the offending vehicle. Service on respondents 1 & 2 are dispensed with.

A short controversy is involved in the present appeal. The appellants have claimed enhancement in the compensation amount mainly on two grounds; i.e., the Tribunal has not considered the correct wages of the deceased and also a meager amount of compensation has been awarded under other heads of compensation. Both the counsels appearing for the parties state that the matter can be taken up for final disposal.

Admit.

Before adverting to deal with the contentions of the parties, it would be appropriate to give brief facts of the case as under:-

On 9.6.2005, deceased Babu Rao Gawai along with other persons was travelling in TSR bearing registration no.DL-1RC-3290 and going towards village Chhara, Distt. Jhajjar, Haryana. When the said TSR was going towards

Main Rohtak Road and reached near Joon Transport Office in front of village Tikri Kalan, at about 2.40 p.m., a Tata 407 Tempo bearing registration no.HR-55-9979, came from opposite direction by taking a wrong side being driven in rash and negligent manner, hit the said TSR, due to which all the persons including the deceased received injuries. They were taken to SGM Hospital, Mangol Puri, Delhi, where deceased Babu Rao Gawai succumbed to injuries.

Counsel for the appellants contends that the deceased was earning a sum of Rs.10,000/- per month as he was self employed as Raj Mistri. Counsel for the appellants contends that the Tribunal has wrongly taken into consideration the minimum wages for assessing the income of the deceased. Counsel contends that the income of Rs.10,000/- should be taken into consideration for determining the loss of dependency in the present case. Counsel further contends that the deceased was survived by his widow, two children and his mother aged about 80 years. Counsel contends that the Tribunal has awarded a meager

amount of Rs.15,000/-towards loss of love and affection and similar amount for the loss of consortium.

Per contra, Mr. Pradeep Gaur counsel for the respondent no.3 insurance company vehemently refutes the contentions of the counsel for the appellants. Mr. Gaur contends that in the absence of any documentary evidence led by the appellants, the Tribunal has rightly assessed the income of the deceased by taking recourse to the Minimum Wages Act. Counsel thus contends that no fault can be found with the said finding of the Tribunal. On the future prospects the contention of the counsel for the respondent is that the deceased was admittedly of 59 years of age, therefore, the Tribunal has rightly not taken into consideration the future prospects of the deceased as that is the age when one nearing his retirement. Mr. Gaur also contends that even otherwise also the appellants have not proved on record the grant of any amount towards future prospects. As regards non-pecuniary damages, counsel for the respondent contends that the impugned award is

absolutely just and reasonable therefore, the appellants are not entitled to any excess amount of compensation towards the non-pecuniary damages other than the one as granted by the Tribunal.

I have heard learned counsel for the parties at great length and have also perused the record.

Perusal of the award shows that the appellants have pleaded the income of the deceased at Rs.10,000/- per month but failed to produce any documentary evidence on record to show the basis of claiming the said monthly income. It is no more res integra that for establishing the income, the appellants have to place sufficient material on record and then to prove the basis for claiming particular income of the deceased. Mere bald averment in the claim petition or in the testimony would not establish the income unless proved with the help of some cogent evidence. In this regard in **Oriental Insurance Co.Ltd. Vs. Meena Variyal, (2007) 5 SCC 428**, the Hon'ble Apex Court has given following observations:

> "It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis--vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment."

Since in the present case no documentary evidence was proved on record to show the said income of Rs.10,000/-, therefore, the Tribunal has rightly taken recourse to the Minimum Wages Act for assessing the income of the deceased. The infirmity in assessing the said income is only to the limited extent of the Tribunal taking Raj Mistri as an unskilled labourer and to that extent finding needs to be set aside. Raj Mistri fall in the category of

skilled labourer and under the Minimum Wages Act, wages for skilled labourer as on the relevant date of the accident i.e., 9.6.2005 were Rs.3468.90 per month say Rs.3469/- per month. The Tribunal has applied the multiplier of 8 to the multiplicand of Rs.24,400/-. Once the multiplier of 8 has been applied in assessing the loss of dependency, this Court has already taken a view that the increase in the minimum wages in such cases has to be taken into consideration. A perusal of the minimum wages notified under the Minimum Wages Act shows that to neutralize increase in inflation and cost of living, minimum wages virtually increase more than double after every 10 years. The deceased was aged 59 years and multiplier of 8 has been applied in the present case, therefore, at least the increase in the minimum wages for a period of five years can safely be taken into consideration. Minimum wages of skilled labourers in the year 1980 was Rs.320/- p.m. and same rose to Rs.1,083/- p.m. in the year 1990, meaning thereby, that there has been an increase of nearly 238% in the minimum wages

from the year 1980 to 1990. Thus, it could be safely assumed that the income of the deceased would have doubled in the next 10 years. Adopting the same yardstick there would be at least an increase of 50% i.e., Rs.5203.50, say Rs.5264/- after a lapse of five years and taking the average of both, the income of the deceased comes to Rs. 4336.50 p.m. and after deducting 1/3rd from the same, the monthly dependency would come to Rs. 2891/- and Rs.34,692/- per annum. Multiplying the same with the multiplier of 8 years it would come to Rs.2,77,536/-. The amount of Rs.1,95,200/- towards the loss of dependency awarded by the Tribunal is thus enhanced to Rs.2,77,536/-.

As regards the other contention of the counsel for the appellants that the Tribunal has granted a meager amount towards loss of love and affection and loss of consortium, the amount under the said respective heads are increased from Rs.15,000/- to Rs.25,000/-.

The differential amount shall be paid by the insurance company with up-to-date interest @8% p.a. from

the date of filing of the petition till realisation.

With these directions,appeal stands disposed of.

KAILASH GAMBHIR, J.

December 07, 2007
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